

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Nov 02, 2022

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

CHRISTY R.,¹

Plaintiff,

v.

KILOLO KIJAKAZI,
ACTING COMMISSIONER OF
SOCIAL SECURITY,²

Defendant.

No. 4:21-CV-05022-ACE

ORDER GRANTING DEFENDANT'S
MOTION FOR SUMMARY
JUDGMENT

ECF Nos. 20, 22

BEFORE THE COURT are cross-motions for summary judgment. ECF No. 20, 22. Attorney Chad Hatfield represents Christy R. (Plaintiff); Special Assistant United States Attorney Nancy Zaragoza represents the Commissioner of Social Security (Defendant). The parties have consented to proceed before a magistrate judge. ECF No. 6. After reviewing the administrative record and the

¹To protect the privacy of plaintiffs in social security cases, the undersigned identifies them by only their first names and the initial of their last names.

²Kilolo Kijakazi became the Acting Commissioner of Social Security on July 9, 2021. Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, Kilolo Kijakazi is substituted for Andrew M. Saul as the defendant in this suit. No further action need be taken to continue this suit. *See* 42 U.S.C. § 405(g).

briefs filed by the parties, the Court **GRANTS** Defendant's Motion for Summary Judgment and **DENIES** Plaintiff's Motion for Summary Judgment.

JURISDICTION

Plaintiff filed an application for Supplemental Security Income on November 27, 2017, alleging disability beginning October 24, 2014,³ due to hoarse voice, loss of voice, migraines, interstitial lung disease (scarring of the lung tissue), depression, strokes, hyper chemical sensitivity, difficulty breathing, stenosis of the lumbar spine, and diabetes. Tr. 96-97. The application was denied initially and upon reconsideration. Tr. 127-35, 139-45. Administrative Law Judge (ALJ) Caroline Siderius held an initial hearing on October 17, 2019, and a supplemental hearing on June 8, 2020. Tr. 37-95. She issued an unfavorable decision on September 3, 2020. Tr. 15-28. Plaintiff requested review by the Appeals Council and the Appeals Council denied the request on December 11, 2020. Tr. 1-5. The ALJ's September 2020 decision became the final decision of the Commissioner, which is appealable to the district court pursuant to 42 U.S.C. § 405(g). Plaintiff filed this action for judicial review on February 16, 2021. ECF No. 1.

STATEMENT OF FACTS

Plaintiff was born in 1976 and was 41 years old when she filed her application. Tr. 27. She has an 11th grade education and has not worked outside the home much, as she was raising her four children. Tr. 45, 80-81, 312. In 2014 she developed interstitial lung disease after being exposed to ozone, which was used to clean her home after a fire. Tr. 42, 80. She now reports extreme breathing reactions any time she is exposed to any chemicals, including other people's soap, deodorants, or perfumes, and virtually all cleaning agents. Tr. 45-49. She has also

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³Plaintiff later amended the alleged onset date to the protected filing date, November 27, 2017. Tr. 64-65.

1 been treated for spinal problems and recurrent headaches since having a small
2 stroke in 2016. Tr. 51-54.

3 STANDARD OF REVIEW

4 The ALJ is tasked with “determining credibility, resolving conflicts in
5 medical testimony, and resolving ambiguities.” *Andrews v. Shalala*, 53 F.3d 1035,
6 1039 (9th Cir. 1995). The ALJ’s determinations of law are reviewed *de novo*, with
7 deference to a reasonable interpretation of the applicable statutes. *McNatt v. Apfel*,
8 201 F.3d 1084, 1087 (9th Cir. 2000). The decision of the ALJ may be reversed
9 only if it is not supported by substantial evidence or if it is based on legal error.
10 *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9th Cir. 1999). Substantial evidence is
11 defined as being more than a mere scintilla, but less than a preponderance. *Id.* at
12 1098. Put another way, substantial evidence “is such relevant evidence as a
13 reasonable mind might accept as adequate to support a conclusion.” *Richardson v.*
14 *Perales*, 402 U.S. 389, 401 (1971), (quoting *Consolidated Edison Co. v. NLRB*,
15 305 U.S. 197, 229 (1938)). If the evidence is susceptible to more than one rational
16 interpretation, the Court may not substitute its judgment for that of the ALJ.
17 *Tackett*, 180 F.3d at 1098; *Morgan v. Comm’r of Social Sec. Admin.*, 169 F.3d 595,
18 599 (9th Cir. 1999). If substantial evidence supports the administrative findings, or
19 if conflicting evidence supports a finding of either disability or non-disability, the
20 ALJ’s determination is conclusive. *Sprague v. Bowen*, 812 F.2d 1226, 1229-1230
21 (9th Cir. 1987). Nevertheless, a decision supported by substantial evidence will be
22 set aside if the proper legal standards were not applied in weighing the evidence
23 and making the decision. *Browner v. Sec’y of Health and Hum. Services*, 839 F.2d
24 432, 433 (9th Cir. 1988).

25 SEQUENTIAL EVALUATION PROCESS

26 The Commissioner has established a five-step sequential evaluation process
27 for determining whether a person is disabled. 20 C.F.R. § 416.920(a); *Bowen v.*
28 *Yuckert*, 482 U.S. 137, 140-142 (1987). In steps one through four, the claimant

bears the burden of establishing a prima facie case of disability benefits. *Tackett*, 180 F.3d at 1098-1099. This burden is met once a claimant establishes that a physical or mental impairment prevents the claimant from engaging in past relevant work. 20 C.F.R. § 416.920(a)(4). If a claimant cannot perform past relevant work, the ALJ proceeds to step five, and the burden shifts to the Commissioner to show (1) that Plaintiff can perform other substantial gainful activity and (2) that a significant number of jobs exist in the national economy which Plaintiff can perform. *Kail v. Heckler*, 722 F.2d 1496, 1497-1498 (9th Cir. 1984). If a claimant cannot make an adjustment to other work in the national economy, the claimant will be found disabled. 20 C.F.R. § 416.920(a)(4)(v).

ADMINISTRATIVE DECISION

On September 3, 2020, the ALJ issued a decision finding Plaintiff was not disabled as defined in the Social Security Act. Tr. 15-28.

At step one, the ALJ found Plaintiff had not engaged in substantial gainful activity since the application date. Tr. 17.

At step two, the ALJ determined Plaintiff had the following severe impairments: diabetes mellitus, interstitial lung disease, and degenerative disc disease. *Id.*

At step three, the ALJ found Plaintiff did not have an impairment or combination of impairments that met or medically equaled the severity of one of the listed impairments. Tr. 20-21.

The ALJ assessed Plaintiff's Residual Functional Capacity (RFC) and found she could perform light exertion work, with the following additional limitations:

could lift 20 pounds occasionally and 10 pounds frequently;
could sit up to 8 hours a day with ordinary breaks; could
stand/walk up to 4 hours in an 8-hour day for 1 hour at a time;
could not climb ladders, ropes, or scaffolds; could occasionally
stoop, crouch, and crawl; could not work with unprotected
heights; should avoid all exposure to odors, dusts, gases, fumes,

1 and environmental irritants; should avoid extreme temperatures;
2 should avoid industrial vibration; and could not handle or work
3 in close proximity to chemicals.

Tr. 21.

4 At step four, the ALJ found Plaintiff had no past relevant work. Tr. 27.

5 At step five, the ALJ determined that, based on the testimony of the
6 vocational expert, and considering Plaintiff's age, education, work experience, and
7 RFC, Plaintiff could perform jobs that existed in significant numbers in the
8 national economy, including the jobs of production assembler, mail clerk, and hand
9 packager. Tr. 27-28.

10 The ALJ thus concluded Plaintiff was not under a disability within the
11 meaning of the Social Security Act at any time from the application date through
12 the date of the decision. Tr. 28.

13 ISSUES

14 The question presented is whether substantial evidence supports the ALJ's
15 decision denying benefits and, if so, whether that decision is based on proper legal
16 standards.

17 Plaintiff contends the ALJ erred by (1) improperly evaluating the medical
18 opinion evidence; (2) improperly rejecting headaches as a severe impairment at
19 step two; (3) conducting an inadequate step three analysis; (4) improperly rejecting
20 Plaintiff's subjective complaints; and (5) conducting an inadequate step five
21 analysis.

22 DISCUSSION

23 1. Medical Opinion – Dr. Ho

24 Plaintiff argues the ALJ improperly disregarded the opinion from her
25 treating provider, Dr. Lawrence Ho. ECF No. 20 at 8-13.

26 For claims filed on or after March 27, 2017, new regulations apply that
27 change the framework for how an ALJ must weigh medical opinion evidence.
28 *Revisions to Rules Regarding the Evaluation of Medical Evidence*, 2017 WL

1 168819, 82 Fed. Reg. 5844-01 (Jan. 18, 2017); 20 C.F.R. § 416.920c. The new
2 regulations provide the ALJ will no longer give any specific evidentiary weight to
3 medical opinions or prior administrative medical findings, including those from
4 treating medical sources. 20 C.F.R. § 416.920c(a). Instead, the ALJ will consider
5 the persuasiveness of each medical opinion and prior administrative medical
6 finding from medical sources. 20 C.F.R. § 416.920c(a) and (b). The ALJ is
7 required to consider multiple factors, including supportability, consistency, the
8 source's relationship with the claimant, any specialization of the source, and other
9 factors (such as the source's familiarity with other evidence in the file or an
10 understanding of Social Security's disability program). 20 C.F.R. §
11 416.920c(c)(1)-(5). The regulations make clear that the supportability and
12 consistency of an opinion are the most important factors, and the ALJ must
13 articulate how they considered those factors in determining the persuasiveness of
14 each medical opinion or prior administrative medical finding. 20 C.F.R. §
15 416.920c(b)(2). The ALJ may explain how they considered the other factors, but
16 is not required to do so, except in cases where two or more opinions are equally
17 well-supported and consistent with the record. *Id.*

18 Supportability and consistency are further explained in the regulations:

19 (1) Supportability. The more relevant the objective medical evidence and
20 supporting explanations presented by a medical source are to support his or
21 her medical opinion(s) or prior administrative medical finding(s), the more
22 persuasive the medical opinions or prior administrative medical finding(s)
will be.

23 (2) Consistency. The more consistent a medical opinion(s) or prior
24 administrative medical finding(s) is with the evidence from other medical
25 sources and nonmedical sources in the claim, the more persuasive the
26 medical opinion(s) or prior administrative medical finding(s) will be.

27 20 C.F.R. § 416.920c(c)(1)-(2). The Ninth Circuit has additionally held that the
28 new regulatory framework displaces the longstanding case law requiring an ALJ to

1 provide “specific and legitimate” or “clear and convincing” reasons for rejecting a
2 treating or examining doctor’s opinion. *Woods v. Kijakazi*, 32 F.4th 785, 787 (9th
3 Cir. 2022).

4 Plaintiff’s treating pulmonologist, Dr. Lawrence Ho, completed a medical
5 source statement in September 2019, in which he noted Plaintiff’s interstitial lung
6 disease and opined she was limited to light work, and that work on a regular basis
7 would cause her condition to deteriorate with exposures to chemical irritants. Tr.
8 1107-08. He further opined Plaintiff would miss four or more days of work per
9 month depending on exposures, would be off task more than 30 percent of the
10 time, and would need to lie down for 30-45 minutes during the day due to
11 headaches from exposures. *Id.*

12 The ALJ found this opinion less persuasive than the state agency doctors’
13 opinions, noting that it was not entirely consistent with the longitudinal evidence of
14 record and that there was no objective evidence to support the conclusions. Tr. 26-
15 27. She found the limitation to light work was persuasive. *Id.*

16 Plaintiff argues the ALJ erred in only giving a boilerplate explanation for the
17 rejection. ECF No. 20 at 10. She further asserts that Plaintiff’s primary condition
18 of interstitial lung disease is not one that lends itself to objective measures, but that
19 the ALJ’s statement that there was no objective support for Dr. Ho’s conclusions
20 was false, pointing to evidence of Plaintiff’s ER trips and repeated medical visits
21 for wheezing, fatigue, strep throat, bronchitis, and other breathing problems. *Id.* at
22 10-12. Defendant argues the ALJ reasonably addressed the consistency and
23 supportability factors, and argues that while the ALJ may have explained her
24 rationale with less than ideal clarity, her path may be reasonably discerned from
25 the rest of the decision, including the ALJ’s discussion of the medical records and
26 rationale for adopting the state agency doctors’ and medical expert’s opinions.
27 ECF No. 22 at 16-17.

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1 The Court finds the ALJ did not err. The ALJ reasonably noted the factors
2 of consistency and supportability. The decision contains an extensive summary of
3 the treatment records, including the largely normal objective testing results, which
4 the ALJ found to be inconsistent with the significant limits opined by Dr. Ho. Tr.
5 22-25. The ALJ further noted the lack of objective evidence to support the
6 conclusion, which is consistent with Dr. Ho's own treatment notes that indicated
7 Plaintiff's interstitial lung disease was mostly stable and conservatively managed.
8 Tr. 1114, 1122. The Court finds the ALJ's conclusion that there are no objective
9 findings to support the disabling limitations is supported by substantial evidence.
10 Though Plaintiff offers an alternative interpretation of the record, "when the
11 evidence is susceptible to more than one rational interpretation, we must uphold
12 the ALJ's findings if they are supported by inferences reasonably drawn from the
13 record." *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012), *superseded on*
14 *other grounds by* 20 C.F.R. § 416.902(a).

15 **2. Plaintiff's Subjective Complaints**

16 Plaintiff alleges the ALJ erred in rejecting her symptom testimony without
17 providing adequate reasons. ECF No. 20 at 16-20.

18 It is the province of the ALJ to make determinations regarding a claimant's
19 subjective reports. *Andrews*, 53 F.3d at 1039. However, the ALJ's findings must
20 be supported by specific cogent reasons. *Rashad v. Sullivan*, 903 F.2d 1229, 1231
21 (9th Cir. 1990). Absent affirmative evidence of malingering, the ALJ's reasons for
22 rejecting a claimant's testimony must be "specific, clear and convincing." *Smolen*
23 *v. Chater*, 80 F.3d 1273, 1281 (9th Cir. 1996); *Lester v. Chater*, 81 F.3d 821, 834
24 (9th Cir. 1995).

25 The ALJ found Plaintiff's medically determinable impairments could
26 reasonably be expected to cause the alleged symptoms; however, she found
27 Plaintiff's statements concerning the intensity, persistence and limiting effects of
28 her symptoms were not entirely consistent with the medical evidence and other

1 evidence in the record. Tr. 25. Specifically, the ALJ found Plaintiff's allegations
2 to be undermined by evidence showing her condition was controlled or responsive
3 to treatment, that she admitted to periods of improvement, and that her daily
4 activities were largely intact. Tr. 25. The ALJ additionally noted that the record
5 contained little indication of Plaintiff having adverse reactions to sanitizers and
6 odors present in medical offices, despite her testimony that this was a major trigger
7 for her. Tr. 26.

8 Plaintiff argues the ALJ improperly rejected her allegations without pointing
9 to any evidence that her condition was controlled with treatment. ECF No. 20 at
10 18. She asserts the mild findings on various tests are not relevant to the severity of
11 her condition when she is exposed to an irritant. *Id.* She further argues that the
12 ALJ failed to explain how any of her modest daily activities in the controlled
13 environment of her home are inconsistent with her allegations, and asserts the ALJ
14 failed to address Plaintiff's allegations about needing elevate her legs, lay down
15 when she got a headache, and use her inhalers and nebulizers for long periods each
16 day. *Id.* at 19-20. Defendant argues the ALJ reasonably found Plaintiff's
17 complaints to be inconsistent with her mostly normal physical exams, the fact that
18 her condition was largely controlled with conservative care, and with her
19 demonstrated abilities. ECF No. 22 at 2-7.

20 The Court finds the ALJ did not err. An ALJ may consider evidence of the
21 type and effectiveness of treatments received in assessing the reliability of a
22 claimant's symptom allegations. 20 C.F.R. § 416.929(c)(3); Social Security
23 Ruling 16-3p. The ALJ noted Plaintiff's condition was largely managed with
24 conservative care and was regularly noted to be stable and improved, with few
25 exacerbations. Tr. 25. Evidence of medical treatment successfully relieving
26 symptoms can undermine a claim of disability. *Wellington v. Berryhill*, 878 F.3d
27 867, 876 (9th Cir. 2017).

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1 Furthermore, an ALJ may point to inconsistencies in the record in assessing
2 the reliability of a claimant's allegations. *Bray v. Comm'r of Soc. Sec. Admin.*, 554
3 F.3d 1219, 1227 (9th Cir. 2009). Plaintiff testified that any time she is exposed to
4 chemical scents, including cleaners, she has extreme reactions that will lead her to
5 feel as if she is "quite literally choking to death." Tr. 47-48. She said that doctors'
6 offices are a major problem because of all the sanitizer and cleaners, and testified
7 that if she goes to a doctor's office or store, she ends up in the ER most of the time.
8 Tr. 48-49, 77. However, the record contains only one instance of Plaintiff going to
9 the ER for an exposure to hand sanitizer that she was not able to treat at home, Tr.
10 1164, and as the ALJ noted, Plaintiff attended numerous medical appointments
11 "with little indication that she had any adverse reaction to the sanitizers or odors
12 present in those settings." Tr. 26. This inconsistency was a relevant factor for the
13 ALJ to consider.

14 The ALJ's interpretation of the record as undermining Plaintiff's testimony
15 is supported by substantial evidence.

16 **3. Step Two**

17 Plaintiff argues the ALJ erred in failing to find headaches to be a severe
18 impairment at step two. ECF No. 20 at 13-14.

19 At step two of the sequential evaluation process, the ALJ must determine
20 whether the claimant has any medically determinable severe impairments. 20
21 C.F.R. § 416.920(a)(4)(ii). An impairment is "not severe" if it does not
22 "significantly limit" the ability to conduct "basic work activities." 20 C.F.R. §
23 416.922(a). Basic work activities are "abilities and aptitudes necessary to do most
24 jobs." 20 C.F.R. § 416.922(b). "An impairment or combination of impairments
25 can be found not severe only if the evidence establishes a slight abnormality that
26 has no more than a minimal effect on an individual's ability to work." *Smolen v.*
27 *Chater*, 80 F.3d 1273, 1290 (9th Cir. 1996) (internal quotation marks omitted).
28 The claimant bears the burden of demonstrating that an impairment is medically

1 determinable and severe. *Valentine v. Comm’r Soc. Sec. Admin.*, 574 F.3d 685,
2 689 (9th Cir. 2009).

3 The ALJ identified several severe impairments at step two, but found that
4 her status post-stroke, including alleged headaches, was not a severe impairment
5 given the unrevealing imaging and normal neurological exams. Tr. 18.

6 Plaintiff argues the ALJ erred by failing to find headaches to be a severe
7 impairment, noting her recurrent treatment for headaches and reports of daily
8 headaches requiring her to lie down in a dark room multiple times per week. ECF
9 No. 20 at 13-14. Defendant argues the ALJ reasonably found the condition non-
10 severe, particularly given the testimony of the medical expert who noted the lack
11 of consistent treatment for or complaints of headaches in the record. ECF No. 22
12 at 7-8. Defendant further argues that Plaintiff has not demonstrated any harm as
13 step two was decided in her favor and Plaintiff testified her headaches were among
14 the symptoms of her chemical sensitivity, which the ALJ addressed and found not
15 to be as severe as Plaintiff alleged. *Id.* at 8.

16 The Court finds the ALJ did not err. The step two analysis is “a de minimis
17 screening device used to dispose of groundless claims.” *Webb v. Barnhart*, 433
18 F.3d 683, 687 (9th Cir. 2005). Because the ALJ did not end the analysis at step
19 two, the only potential error would be in the formulation of the RFC. Plaintiff has
20 not pointed to any credited evidence that establishes limitations stemming from
21 headaches, other than her own statements, which the ALJ gave sufficient reasons
22 for disregarding. Furthermore, based on the testimony of the medical expert, it is
23 not clear whether Plaintiff’s headaches are their own condition or a symptom of
24 her chemical exposures or medication overuse. Tr. 70-71. The medical expert did
25 not assess any additional functional limitations specifically to account for headache
26 symptoms, and Plaintiff has not challenged the medical expert’s testimony.
27 Therefore, the Court finds the ALJ did not err at step two.

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1 **4. Step Three**

2 Plaintiff argues the ALJ erred in her step three analysis by failing to discuss
3 Listing 11.02 for headaches and Listing 1.04 for Plaintiff's spinal condition.

4 At step three of the sequential evaluation process, the ALJ considers whether
5 one or more of the claimant's impairments meets or equals an impairment listed in
6 Appendix 1 to Subpart P of the regulations. 20 C.F.R. § 416.920(a)(4)(iii). Each
7 Listing sets forth the "symptoms, signs, and laboratory findings" which must be
8 established for a claimant's impairment to meet the Listing. *Tackett*, 180 F.3d at
9 1099. If a condition meets or equals a Listing, the claimant is considered disabled
10 without further inquiry. 20 C.F.R. § 416.920(d).

11 With respect to Listing 11.02, the Court finds the ALJ did not err in not
12 including headaches as a severe impairment, and thus did not err in failing to
13 discuss the condition at step three. Furthermore, Plaintiff makes no argument as to
14 how her condition equals each of the elements of the Listing. The ALJ did not err.

15 Regarding Listing 1.04, the ALJ found the record did not contain evidence
16 of compromise of a nerve root, and even if it did, there was not evidence of
17 corresponding motor loss, muscle weakness, sensory or reflex loss, or any of the
18 other elements of the various parts of Listing 1.04. Tr. 20-21. Plaintiff points to
19 objective findings in the record that she alleges satisfy the requirements of the
20 Listing; however, at the hearing Plaintiff's counsel asked the medical expert about
21 these findings and the doctor testified that the straight leg raise tests and absent
22 patellar reflexes did not correspond to the objective imaging and the particular
23 levels of the lumbar spine that were impaired. Tr. 72-75. The ALJ reasonably
24 relied on this evidence in finding Plaintiff's condition did not meet or equal Listing
25 1.04.

26 **5. Step Five**

27 Plaintiff argues that the step five findings are not supported because the ALJ
28 posed an incomplete hypothetical to the vocational expert. ECF No. 20 at 20-21.

1 This argument is premised on successfully showing that the ALJ erred at one of the
2 other steps of the analysis. Because the Court finds that the ALJ did not harmfully
3 err in her treatment of Plaintiff's symptom statements or the medical evidence,
4 Plaintiff's argument is without merit.

5 **CONCLUSION**

6 Having reviewed the record and the ALJ's findings, the Court finds the
7 ALJ's decision is supported by substantial evidence and free of legal error.

8 Therefore, **IT IS HEREBY ORDERED:**

9 1. Defendant's Motion for Summary Judgment, **ECF No. 22**, is
10 **GRANTED.**

11 2. Plaintiff's Motion for Summary Judgment, **ECF No. 20**, is **DENIED.**

12 **IT IS SO ORDERED.** The District Court Executive is directed to file this
13 Order and provide a copy to counsel for Plaintiff and Defendant. Judgment shall be
14 entered for Defendant and the file shall be **CLOSED.**

15 DATED November 2, 2022.

A handwritten signature in blue ink, reading "Alexander C. Ekstrom", is written over a horizontal line.

ALEXANDER C. EKSTROM

UNITED STATES MAGISTRATE JUDGE